

REMARKS

Claims 2-8 are pending in the application. Claims 2 and 3 have been amended.

Claims 1-4 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,185,451 (Richardson). Claims 5-8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Richardson et al. in view of U.S. Patent No. 4,688,581 (Moss). These rejections are respectfully traversed. Applicants hereby request reconsideration and allowance of the claims in view of the following arguments.

Regarding the anticipation rejection of claim 1, this rejection is moot, since claim 1 has been cancelled.

Regarding the anticipation rejection of independent claims 2 and 3 based on Richardson, these claims have been amended for clarity to recite a muscle measuring device for determining proportions of types of muscles in measured portions of a subject. Support for these amendments is found, for example, in claims 2 and 3 as originally filed. Richardson, in contrast, discloses a device for determining muscular force, as admitted at page 3 of the Office Action.

Claims 2 and 3 have been further amended for clarity to recite that the claimed determining unit makes its determination based on the amplitude and frequency derived from a measured mechanomyogram in which the amplitude decreases while the frequency increases when the subject does exercise with respect to a load. Support for these amendments is found, for example, in the first complete paragraph of page 11 of the present application. No new matter has been added.

Richardson does not disclose or suggest the determining unit of amended claim 2 or 3. The Office Action contends, at page 3, that Richardson teaches “determining the muscular force utilized by analyzing amplitudes and average frequency”. However, there is no support offered for this contention by the Examiner, and no such support exists in Richardson.

Furthermore, Richardson does not disclose or even suggest the recited calculation unit of claims 2 and 3, which calculates a muscle volume between portions to be measured of a subject. The Office Action points out Richardson teaches a processing/calculation unit (5) for calculating muscle volume and

maximum voluntary contraction based on individual input and measured bioelectric impedance.

However, the claimed calculation unit calculates a muscle volume between portions to be measured, not the “muscle volume” as taught by Richardson. The claimed calculation unit calculates a maximum voluntary contraction based on the calculated muscle volume, not based on individual input and measured bioelectric impedance, as taught by Richardson. Since Richardson’s processing/calculation unit uses “individual input”, it cannot solve the problem of the prior art, discussed at page 3 of the present application and addressed by the claimed invention, of inaccurate strength measurements due to subjective factors.

Thus, Richardson does not anticipate independent claims 2 or 3, because it does not disclose each and every element of those claims. In particular, Richardson does not disclose the determining unit of amended claim 2 or 3, which makes a determination based on the amplitude and frequency derived from a measured mechanomyogram in which the amplitude decreases while the frequency increases when the subject does exercise with respect to a load. Additionally, Richardson does not disclose the recited calculation unit of claims 2 and 3, which calculates a muscle volume between portions to be measured of a subject. Moreover, it would not have been obvious to modify the apparatus of Richardson to include the determining unit or calculation unit of claims 2 or 3.

Consequently, independent claims 2 and 3 are patentable, as is claim 4, which depends from claim 2 or 3.

Regarding the obviousness rejection of claims 5-8 based on Richardson and Moss, the Moss reference does not disclose or suggest an apparatus having the above-discussed calculation unit or determining unit of amended claims 2 and 3. Thus, Moss does not furnish the features of independent claims 2 and 3, from which claims 5-8 depend, missing from Richardson. Therefore, any combination of Richardson and Moss would be missing the claimed calculation unit and the determining unit of claims 2 and 3, and it would not have been obvious to add these features to any Richardson/Moss combination.

Consequently, claims 5-8 are patentable.

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Accordingly, it is believed that all pending claims are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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